



Jay C. Keithley
Vice President
Law and External Affairs
United Telephone Companies

1850 M Street, N.W., 11th Floor
Washington, D.C. 20036
Telephone: (202) 828-7453

RECEIVED
NOV 10 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

November 10, 1993

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20036

RE: In the Matter of Implementation of Section 309(j) of the Communications Act
Competitive Bidding, PP Docket No. 93-253

Dear Mr. Caton:

Attached is the original and four copies of the Comments of Sprint Corporation in the matter referenced above.

Sincerely,

A handwritten signature in cursive script that reads "Jay C. Keithley".

Jay C. Keithley
Vice President
Law and External Affairs

Attachment

JCK/mlm

No. of Copies rec'd
List ABCDE

Handwritten initials, possibly "JCK", written in a cursive style.

DOCKET FILE COPY ORIGINAL

RECEIVED

NOV 10 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Implementation of Section 309(j)
of the Communications Act
Competitive Bidding

)
)
) PP Docket No. 93-253
)
)

COMMENTS OF SPRINT CORPORATION

Respectfully submitted,

SPRINT CORPORATION

Jay C. Keithley
Leon M. Kestenbaum
1850 M Street N.W.
Suite 1100
Washington, D.C. 20036
(202) 857-1030

Kevin C. Gallagher
8725 Higgins Rd.
Chicago, IL 60631
(312) 399-2348

W. Richard Morris
P. O. Box 11315
Kansas City, MO 64112
(913) 624-3096

ITS ATTORNEYS

November 10, 1993

SUMMARY

Sprint supports the goals of Congress to ensure that the American people have the opportunity, in the near future, to receive new and innovative PCS technology and services provided by a wide variety of companies.

In order to promote these goals, Sprint proposes that geographically disbursed cellular carriers that serve 20% or less of the POPs in a MTA be allowed to bid for more than 10 MHz of spectrum. This will partially ameliorate the unintended effects of the 10% POP coverage restriction on these cellular carriers. Further, it will promote diversity of ownership and rapid deployment of PCS technology and service.

Combinatorial bidding should not be adopted by the Commission. Combinatorial bidding has the effect of creating nationally dominant PCS providers while excluding many applicants from serious PCS opportunities. Thus, combinatorial bidding runs counter to Congressional dictates. If the Commission were to offer combinatorial bids with the property and spectrum in each lot defined by bidders, comparison of various bids would prove unworkable. This effectively makes the choices available either nationwide MTA-wide license combinatorial bidding or bidding on individual licenses. Because of the dominance problem associated with nationwide combinatorial bidding, and the problems with con-

structing and comparing other combinatorial bids, Sprint strongly urges the rejection of combinatorial bidding.

In order to facilitate the rapid deployment of PCS technology, the Commission should encourage licensees to apply their available capital to construction and deployment. If the Commission adopts excessive down payment requirements, possibly requiring payment of the entire bid within the first few weeks after the auction, licenses will be cash starved and will have over deployed capital to licensing. Thus, they may be forced into a situation where rapid deployment of PCS technology may be compromised. To avoid this potential outcome, the Commission should allow all licensees to post only a 10% down payment and to pay the remainder over the term of the first licensing period. A reasonable deposit, to ensure that bidders are serious, should be required. Sprint proposes a two-tier structure--the lower of either \$10 million or \$.02/MHz POP. This would prove the intent of the bidder to close without requiring undue deposits.

While Sprint supports granting preferences to identified groups, it does not support the creation of a spectrum set-aside. As appropriate, certain bidding or payment preferences should be adopted for these groups. Holders of preference-based licenses should be required to remit profits on the sale to the Commission as an additional license payment if the license is transferred to a non preference holder within six years of initial issuance.

TABLE OF CONTENTS

| | <u>Page</u> |
|--|-------------|
| I. INTRODUCTION. | 1 |
| II. COMBINATORIAL BIDDING SHOULD NOT BE IMPLEMENTED | 4 |
| A. The Commission Does Not Have a Mandate from Congress to Implement Combinatorial Bidding | 4 |
| B. Combinatorial Bids Will Be Difficult to Administer and Unfair to Many Bidders . . | 5 |
| III. CELLULAR CARRIERS SHOULD BE ELIGIBLE TO BID FOR LICENSES WHERE THEY DO NOT MEET THE LICENSEE ELIGIBILITY STANDARDS IF THEY AGREE TO DIVEST DOWN TO ACCEPTABLE STANDARDS | 7 |
| IV. TREATMENT OF DESIGNATED ENTITIES. | 7 |
| A. A Spectrum Set-Aside May Not Advance Stated Congressional Objectives | 7 |
| B. A Spectrum Set-Aside Will Encourage Trafficking | 12 |
| V. BIDDING AND PAYMENT MECHANICS | 15 |
| A. Filing Fees Should Be Reasonable and A Two-Tier Deposit System Should Be Created | 15 |
| B. Installment Payments Should Be Available to All Licensees. | 16 |
| C. Down Payments Should Be Limited to 10% | 17 |
| VI. PERCEIVED COLLUSION PROBLEMS. | 19 |

TABLE OF CONTENTS Cont'd.

| | <u>Page</u> |
|---|-------------|
| VII. MICROWAVE LINKS AND UNSERVED CELLULAR AREAS COMPETITIVE BIDDING | 21 |
| A. Point-to-Point Microwave Common Carrier | 21 |
| B. Unserved Cellular Areas | 23 |
| VIII. CONCLUSION. | 23 |

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
NOV 10 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Section 309(j)) PP Docket No. 93-253
of the Communications Act)
Competitive Bidding)

COMMENTS OF SPRINT CORPORATION

I. INTRODUCTION

Sprint Corporation ("Sprint"), on behalf of Sprint Cellular Company, Sprint Communications Company, L.P., and the United and Central Telephone companies, pursuant to the requirements of the NPRM¹, respectfully submits its comments. Sprint supports the licensing of spectrum for new PCS wireless services through a competitive bidding process. Sprint agrees with Congress' goals concerning competitive bidding:

In particular, the Commission is required to develop methodologies that promote the development and rapid deployment of new technologies; promote economic opportunity and competition and ensure that new and innovative technologies are available to the American people by avoiding excessive concentration and by disseminating licenses among a wide variety of applicants, including small business and businesses owned by members of minority groups and women; recover for the public a portion of the value of the public spectrum resource made

1. In the Matter of Implementation of Section 309(j) of the Communications Act Competitive Bidding, PP Docket No. 93-253, Notice of Proposed Rule Making, released October 12, 1993 ("NPRM").

available to the licensee and the avoidance of unjust enrichment; and promote the efficient and intensive use of the spectrum.²

Sprint supports Congress in these goals of allocating PCS dedicated spectrum in order to promote deployment of PCS technology, avoiding concentration of PCS market power, and recovering a "portion of the value of public spectrum resource" made available for PCS licensees. Sprint notes that Congress has not directed the Commission to maximize PCS spectrum license revenues, but to obtain a "portion of the value" of that resource. Thus, any competitive bidding or accelerated payment plan that maximizes revenues at the expense of market diversity and rapid deployment of PCS technology is not in harmony with Congressional intent.

Sprint is concerned with the timing associated with the NPRM. The decisions in the Second PCS Order³ have been carried over into this proceeding. Petitions for reconsideration in the Second PCS Order have not yet been filed and may not be acted upon before decisions in this proceeding are made. Yet, any changes to the Second PCS Order that affect spectrum allocation

2. Conference Committee Report, H.R. 2264, 103rd Congress, 1st Session, Sec. 309 (j) (3).

3. In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, RM-7140, RM-7175, RM-7618, Second Report and Order, Released October 22, 1993, ("Second PCS Order") at paras. 105-109.

or eligibility will have a profound effect upon the ultimate outcome of this proceeding. Sprint asserts that the Commission should not allow actual bidding until after the Second PCS Order has been reconsidered. Of particular concern to Sprint is the cellular exclusion criteria contained in the Second PCS Order. If Sprint is successful on reconsideration of that exclusion the bidding dynamics may change dramatically.⁴

4. Sprint intends to seek reconsideration of the Second PCS Order's cellular ownership limitations. Sprint believes that the outcome of that Order has an unanticipated negative impact upon geographically dispersed cellular carriers that serve, primarily, smaller markets. This discriminatory impact is shown on the table attached as Exhibit 1. Sprint believes that in order to cure the unintended handicap placed on such cellular carriers, the PCS ineligibility standard based on cellular coverage should be increased from 10% of the POPs in the service area to anything exceeding 20% of the POPs and, similarly, exceeding a 20% ownership position in a given system, or cumulative multiple systems, in the PCS service area.

Sprint believes that the eligibility to hold licenses should turn on real market power or control in a PCS territory. An interest of 20% or less does not meet this test. For example, in the urban Kansas City cellular market, Sprint is a 20% minority partner with majority owner Southwestern Bell. Sprint has no management powers and acts only as a passive investor. Sprint does not have any indicia of control, let alone actual control, of the marketing, operating, or construction decisions. Yet, the unreasonably low ownership and PCS coverage standards in the Second PCS Order unfairly prohibit significant PCS participation in many MTAs by cellular providers with widely scattered and small population service areas.

These unreasonable ownership and coverage standards harm geographically dispersed cellular providers like Sprint and U.S. Cellular more than the generally larger and geographically concentrated carriers like the RBOCs. While the RBOCs will generally be limited to 10 MHz of spectrum in their own service territories, they will each have significant areas in other RBOCs' territory open to them. The same is not true of the geographically dispersed cellular carriers that are not concentrated like the RBOCs or McCaw in MTA markets. Because of this disproportionate impact, the ownership and overlap restriction should be relaxed as described above. While this action will not completely alleviate the problem, it will ameliorate the dis-

II. COMBINATORIAL BIDDING SHOULD NOT BE IMPLEMENTED

A. The Commission Does Not Have A Mandate from Congress to Implement Combinatorial Bidding.

Congress, as noted above, intended the bidding process to serve two goals: avoid excessive concentration of market power and distributing licenses among a wide variety of applicants. Combinatorial bidding across geographic boundaries and multiple spectrum blocks, up to and including the creation of one or two dominant PCS providers through the grant of national licenses, runs afoul of both of these Congressional goals.

The Commission, however, rather than attempting to control the concentration of market power in one or two dominant PCS providers, is proposing to facilitate the creation of dominant PCS companies through combinatorial bidding schemes. These schemes are designed to maximize revenue through assignments of licenses to concerns that are willing to pay a premium to achieve market dominance and will, as a result, be the "highest valued use" of the license.⁵ Thus, the firm with the deepest pockets, relying on the returns anticipated from national market dominance, will bid the highest for the total market. This will

(Footnote 4 continued from previous page)
proportionate impact on these geographically dispersed carriers to a great extent. Further, this relaxation will not allow geographically concentrated cellular carriers that truly have market power in an MTA to acquire more than 10 MHz of spectrum. Thus, there would be no harm to competition in modifying the eligibility standard.

5. See NPRM at pars. 57-61.

result in the virtual exclusion of many of the "wide variety of applicants" that Congress anticipated would become licensees.⁶

While many potential licensees may value individual licenses highly, and may be willing to pay a reasonable amount for these individual licenses, only a very large concern with very deep pockets may have the capacity or the willingness to pay the premium necessary to achieve market dominance. Many firms that desire to compete on a local or regional basis will be excluded from the market because they lack the resources to participate in combinatorial bidding.

B. Combinatorial Bids Will Be Difficult to Administer and Unfair to Many Bidders.

The Commission seeks comments on the various ways in which PCS licenses could be grouped for combinatorial bidding. In particular, comments are sought on three discrete combinatorial bidding scenarios: (1) for all 51 MTAs in both 30 MHz spectrum blocks, (2) for all BTAs in each MTA, and (3) for all three 10 MHz spectrum blocks within a BTA. While, for reasons set out herein, Sprint objects to any form of combinatorial bidding, Sprint believes that any combinatorial license grouping other than the three all or nothing scenarios described above would be unworkable.

Although not proposed by the Commission, some parties suggest that it is appropriate to allow each bidder to custom

6. H.R. 2264, Sec. 6002 (a) at (j) (3) (B).

design its own combination of spectrum and geography in a combinatorial bid. This is clearly not workable because comparisons of different bids would prove extremely difficult and prone to dispute. Any scheme of aggregating blocks of spectrum or multiple geographical license areas will prove to be arbitrary and exclude many bidders that would have bid for a lot containing some but not all of either the spectrum or areas contained in the lot being auctioned. Thus, the Commission either arbitrarily creates lots of spectrum and service areas that exclude many potential bidders that are not interested in portions of the lot, or it creates a "build it yourself" system where bids may not be comparable. Neither of these methods is acceptable. At its best, combinatorial bidding would degenerate into a "winner take all" national combinatorial bid where a dominant PCS provider is rewarded with national dominant market status because it has the deepest pockets and produces the greatest revenue to the federal Treasury.

Combinatorial bidding further disadvantages current cellular providers that may not be eligible in some MTAs or BTAs that are included in a winner take all national license bid or in smaller lots of spectrum or geographic areas offered for combinatorial bidding. The cellular carrier would be ineligible for combinatorial bidding in these instances and would be at a distinct disadvantage.

Additionally, if combinatorial bidding is rejected, it is much more likely that the Congressional intent of encouraging licensing among "a wide variety of applicants" will occur. With more licenses being offered on an individual basis, the likelihood of a diverse group of license holders is increased because it is less likely that two national licenses will be awarded, and thus more likely that the winning bids for individual licenses will come from many different bidders.

**III. CELLULAR CARRIERS SHOULD BE ELIGIBLE TO BID
FOR LICENSES WHERE THEY DO NOT MEET
THE LICENSEE ELIGIBILITY STANDARDS
IF THEY AGREE TO DIVEST
DOWN TO ACCEPTABLE STANDARDS.**

Existing cellular carriers should be allowed to bid on PCS licenses exceeding 10 MHz in geographic areas where they would be ultimately ineligible, provided they agree to divest ownership of the cellular properties in question, after winning the bid, so that they will become eligible as licensees. The Commission, however, must ensure that this process is not abused by cellular carriers that bid on PCS licenses where they would otherwise be ineligible, with the goal of selling the PCS license in an after market transaction. This type of speculation and profiteering must be prohibited.

IV. TREATMENT OF DESIGNATED ENTITIES

**A. A Spectrum Set-Aside May Not Advance Stated
Congressional Objectives**

Sprint fully supports the Commission's efforts to further Congress' objectives to encourage the participation

of entities, such as small businesses, rural telephone companies, and businesses owned by women and minorities in the provision of spectrum-based services.⁷ Sprint respectfully submits, however, that the Commission's proposal to set-aside blocks of 10 MHz or 20 MHz of spectrum for these preference holders is not the most effective means by which to advance this objective. In fact, in its attempt to craft an easily-administered and all-encompassing approach, the Commission has not adequately responded to Congress' mandate that it encourage participation among a diverse group of applicants.

In the Budget Reconciliation Act, Congress specifically directed that the FCC "promote economic" opportunity for a wide variety of applicants including small businesses, rural telephone companies, and businesses owned by women and members of minority groups.⁸ The proposed set-asides will not achieve that end. By grouping all preference holders into one broad category, the Commission ignores the wide diversity that exists among the stated preference holders themselves. A set-aside assumes that the participants will be on more equal footing in their efforts to bid for spectrum for wireless based services. But this is simply not

7. The Budget Reconciliation Act of 1993, Pub. L. No. 103-66 §6002, 107 Stat. 387 (1993).

8. Id.

the case. Preference holders such as rural telephone companies, as a general matter, enjoy a substantial cash flow and ready access to capital. Their ability to outbid other small companies and companies headed by women or minorities without such easy access to capital could be substantial. Further, small entrepreneurial companies that have been in business for some time and have well-established lines of credit may have a substantial advantage over small start-up companies. A set-aside simply recreates a microcosm of the existing groups of potential bidders without preferences. This approach does not encourage all preference holders to participate in spectrum-based services, and will not achieve the stated objectives of Congress.

Sprint proposes, therefore, that instead of adopting one blanket method of preference, the Commission adopt alternative measures for preferential treatment for qualifying applicants, such as bidding preferences, tax certificates or deferred payment schedules. This will enable the Commission to tailor its preferences to meet the different needs of preference holders and more closely link its auction bidding scheme with Congressional objectives.⁹

The Commission could create further opportunity for preference holder participation by advantaging consortia

9. As the Commission notes, there is precedent for the differential treatment of these entities. NPRM at para. 73.

containing preference holders in the bidding process. A consortium comprised solely of preference holders could win a bid, for example, if its bid was no less than 15% below that of the highest bid. Further, allowing preference holders to join in a consortium comprised of both preference holders and others should be allowed. Participation by preference holders, who should bring the benefits of their preferences with them, in such a consortium could enable some preference holders that might not otherwise be able to amass the resources necessary to participate in the bidding process. The effect of the bidding preference could be altered depending upon the percentage of preference holder's ownership in the consortium, and the identity of the preference group.¹⁰ For example, if the Commission determines that companies headed by women and minorities, as a general matter, have less easy access to capital it could provide a different bidding preference for these preference groups.

There is an additional question of whether a spectrum set-aside exceeds the boundaries of Congressional intent. Although the FCC has a Congressional mandate to en-

10. If a set-aside is adopted a consortium with a 50.1% preference holder ownership should qualify for the set-aside. See NPRM para. 77. Further, safeguards like those used in many government contracts could be employed to ensure that a consortium claiming a set-aside is not merely a "front" used to gain a bidding advantage.

courage the participation of preference holders, there is no indication from the language of the statute or from the legislative history that Congress ever envisioned the use of a spectrum set-aside.¹¹ Accordingly, a spectrum set-aside may be vulnerable to a court challenge. As the Commission notes in its NPRM, benign race or gender conscious measures mandated by Congress are constitutionally permissible only if they serve an important governmental objective and are substantially related to the achievement of that objective.¹² "It is of overriding significance in these cases that the FCC's [provisions] have been specifically approved--indeed mandated--by Congress."¹³ Moreover, even interpreting the statute to allow the Commission wide discretion in carrying out its Congressional mandate, a set-aside provision that simply creates one inflexible method of preference will not necessarily advance the government's objective to encourage participation among a diverse category of preference holders.

11. Indeed, Congress has not historically endorsed such set-asides in any FCC spectrum related legislation.

12. NPRM at para. 73. See Metro Broadcasting, Inc. v. FCC, 497 U.S. 547, 560-563 (1990) (court upheld minority preference for broadcast ownership, finding diversity of broadcast voices to be an important governmental objective).

13. Id. at 563. Without a Congressional mandate, race conscious restrictions are subject to a strict scrutiny test.

The alternative proposals do have the advantage of a Congressional mandate.¹⁴ Moreover, these measures allow the Commission the flexibility to tailor the preference to the needs of the particular entities and thus to actually achieve the statutory objectives. Accordingly, the alternative proposals are much more likely to withstand a judicial challenge.

B. A Spectrum Set-Aside Will Encourage Trafficking

The Commission is well aware that a brisk industry existed in cellular license lottery filings and license trafficking. Granting licenses to parties that never intended to construct or operate cellular systems created this brisk after market and allowed many license holders to profit handsomely from mere participation in the lottery process. Competitive bidding that produces market prices should prevent unjust enrichment.

The Commission notes that the primary area where abuse might occur is encountered in the proposed spectrum set-aside for preference holders.¹⁵ Removing the set-aside, as suggested above, should largely control the potential problem. However, because preference holders may not pay

14. Congress specifically directed the Commission to consider the preferential use of alternative payment schedules, tax certificates and bidding preferences. Budget Reconciliation Act, 107 Stat. at 389.

15. NPRM at para. 84.

the full competitive bid price, some restrictions on these licenses is appropriate. For licenses where full bid prices are paid, no transfer restrictions, other than those based on eligibility to hold PCS licenses, need be adopted.

Preference holder licenses may not sell for the same amount of money as similar spectrum allocations based upon fully competitive bidding. This might occur because, as suggested above, even if a set-aside is not adopted, other preference-based policies may allow spectrum purchase by preference holders at less than market value. Thus, these licenses are likely to sell at bargain rates as compared to other PCS spectrum allocations. If this is the case, the preference holders may choose to traffic in the licenses to capture the "market value" over and above what they paid.

Sprint asserts that the Commission should not allow trafficking to occur in either set-aside or preference discounted spectrum to occur without significant controls.¹⁶ In order to control this type of transfer, the Commission should establish an additional license payment if preference based spectrum is transferred, within six years of initial licensing, to a non-preference holder.

16. NPRM at para. 83.

Sprint urges the Commission to require that preference-based set-aside licenses be held for six years before they may be transferred without additional license payment. This would result in a significant build out of the license and actual operation of the system. Sprint agrees with the Commission proposal that, if transfer to a non preference holder were to occur before the six year period, then the original licensee should be able to retain only the original license price, plus net additions, as compensation for the license.¹⁷ The remaining resale proceeds should be remitted to the Commission as an additional payment for the original license.

These provisions will allow licenses to be transferred between license preference holders without penalty. Further, the Commission will stimulate retention of PCS businesses in the long term by these licensees.

As part of this program, Sprint also recommends that the Commission inquire into whether a preference holder has entered into a contract for sale of the license or system prior to the six year term. If such is the case, then the license transfer date should relate to the time the contract was made and remittance of unearned resale proceeds should be made to the Commission. This requirement will

17. Id. at para. 86.

ensure that preference holders are truly independent owners during the start up years of their businesses and that they are not simply "fronts" for other parties.

In a further effort to avoid the use of fronts to obtain preference licenses, Sprint recommends that, as a condition of obtaining a license, the Commission impose terms that restrict relationships between the preference holder licensee and any management company, service company or other similar entity that finances, builds or manages the licensee's PCS system. The Commission should preclude any such management, service or other entity from holding a significant ownership interest in such licenses or from having any preferential right or ability to acquire such licenses or systems on preferential terms.

V. BIDDING AND PAYMENT MECHANICS

A. Filing Fees Should Be Reasonable and A Two-tier Deposit System Should Be Created.

The up front fees that are required of prospective bidders should be reasonable. Sprint has no objection to the normal application fees proposed by the Commission.¹⁸ However, Sprint recommends that a two-tier system be created for deposit fees. Some bidders may desire to bid on several properties not knowing which they will actually end up owning. Others may desire to bid on only one property. In both cases, the Commission's interest

18. NPRM at Para. 97, Fn. 85 and Para. 129.

is in ensuring that those that are bidding are serious bidders with the qualifications to close transactions when they win the bid. This goal is accomplished by requiring a significant up front deposit.

Sprint, however, does not recommend that the Commission use its proposed calculation of up front deposits in all circumstances.¹⁹ By Sprint's calculation, using the Commission's formula, the total deposit that could be required from a company bidding on all spectrum and all geographical areas is approximately \$450,000,000. Clearly, this is excessive. In order to attract only serious bidders, Sprint recommends that a prospective bidder provide a deposit according to the Commission's proposed calculation or \$10 million, whichever is lower.²⁰ This should provide a sufficient incentive not to overreach a firm's ability to close transactions, because the deposit would be placed at risk should the transaction not be closed.

B. Installment Payments Should Be Available to All Licensees.

Further, Sprint recommends that all licensees be eligible to make installment payments on their spectrum bids over

19. Id. at Para 103, i.e., \$.02 per MHz per POP.

20. The Commission's proposed deposit criteria may prove to be too large for preference holders. Deposits may exceed their total capitalization. The Commission may wish to modify the deposit requirements further for preference holders.

the term of the license. The Commission has proposed that only preference holders be allowed to make installment payments.²¹ Sprint asserts that each licensee should focus its available capital on quick deployment of PCS service to the public. By allowing installment payments with interest at an appropriate rate, the Commission will ensure that firms have more capital available for construction and service roll out. This is consistent with the goal of Congress to "promote the development and rapid deployment of new technologies" and is clearly in the public interest.

Further, installment payment schedules will allow PCS licensees to spread their payments over the expansion schedule of their systems. Thus, as more customers come on line through the deployment of additional network components, further license payments are required. Sprint does not support royalty payments and agrees with the Commission that such payments would be "extremely intrusive and difficult to administer in practice."²²

C. Down Payments Should Be Limited to 10%.

The Commission has proposed that a 20% down payment be made on each winning bid. Sprint believes this is an excessive requirement and that payments of this magnitude do not well serve the Congressional objective of quick deployment of PCS tech-

21. Id. at paras. 68-69.

22. Id. at para. 70.

nology. In support of its 20% down payment proposal, the commission cites the 20% down payment required on oil and gas leases.²³ Sprint does not believe this is an appropriate benchmark.

In the oil and gas lease context, big oil companies know that oil demand is high, they know what products they will provide, and they know domestic supply of oil does not meet the needs of the public. Thus, they know that the faster they drill, the more money they will make. In the PCS context, the technology is not mature, market demand is expected but, in reality, unknown, and prudent lenders will exercise caution in the deployment of capital. Because of these concerns, the Commission is requiring that licensees meet a build out schedule. In oil and gas leases, the companies have a known profit incentive to build quickly. In PCS, the Commission, lacking such a known market based incentive, requires deployment.

Because capital for deployment will be scarce until actual market demand is known, PCS providers may be somewhat cash starved. Sprint believes that under these circumstances it makes no sense to force PCS licensees to make excessive down payments, reducing the capital available for technology deployment.

Sprint recommends that the down payment be reduced from 20%, as proposed, to a more reasonable 10%, so that more capital

23. NPRM at Fn. 101.

is available for licensee use in meeting the aggressive, mandated PCS deployment requirements.

VI. PERCEIVED COLLUSION PROBLEMS

The Commission should rely on the antitrust laws for prevention of most potential collusion problems related to PCS service. The antitrust laws provide sufficient enforcement power and penalties to deter most anticompetitive activity.²⁴

In order to provide some check on the opportunity of some large businesses to control the PCS market, through their deep pocket de facto control over bidding, the Commission should explicitly recognize that consortia of several potential PCS licensees may be formed to compete with large existing carriers.

Consortia may be formed with different business structures. For example, a consortium may opt to have several companies loosely bound through a marketing agreement to construct an interconnected, seamless, brand name PCS service. The individual service territories may be owned by any number of individual companies, but a branded identity such as "MobiLink" or "Cellular One" may be created. Another example would be a consortium where members form a partnership and jointly provide PCS service on a multi-MTA basis. These consortia are not anticompetitive, and

24. To the extent the Commission seeks to include anti-collusion protections in its licensing rules, it could require the submission of an affidavit of non-collusion accompanying each application.